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 INTERCEDE GROUP PLC and INTERCEDE LTD.
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9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 SAN FRANCISCO DIVISION

FENWICK & WEST LLP
 ATTORNEYS AT LAW
 SAN FRANCISCO

13 ACTIVIDENTITY CORPORATION, a
 Delaware Corporation,

14 Plaintiff,

15 v.

16 INTERCEDE GROUP PLC AND
 17 INTERCEDE LTD., both of Lutterworth,
 UK,

18 Defendants.
 19

20 AND RELATED COUNTERCLAIMS.
 21

Case No.: 3:08-cv-04577 VRW

**STIPULATION AND [PROPOSED]
 ORDER FOR INJUNCTION AND
 RELATED RELIEF**

Judge: Hon. Bernard Zimmerman

1 Defendants and counterclaimants Intercede Group plc and Intercede Ltd. (collectively,
2 “Intercede”), Plaintiff ActivIdentity Corporation (“ActivIdentity”), and Mr. Michael Neumann
3 submit this stipulation and proposed order for a protective order for an injunction against Mr.
4 Michael Neumann and related relief.

5 On October 6, 2009, Plaintiff ActivIdentity proposed Mr. Neumann as a consultant under
6 Paragraph 10 of the Stipulated Protective Order (“Protective Order”) entered in this case (Doc #
7 51 at 8) whereby he would obtain access to Intercede’s confidential information, including
8 information designated as “Highly Confidential – Attorneys’ Eyes Only” and provided a
9 undertaking signed by Mr. Neumann stating that he had read the Protective Order and agreed to
10 be bound by all of the provisions thereof.

11 Paragraph 9 of the Protective Order expressly prohibits an employee or independent
12 contractor of a party from serving as a consultant and further prohibits retained consultants or
13 experts from becoming an employee or independent contractor (which would include serving as a
14 non-litigation consultant) for a party for a period of two years following the conclusion of this
15 litigation.

16 On November 19, 2009, Intercede objected to the disclosure of Intercede’s confidential
17 information to Mr. Neumann as permitted under the Protective Order.

18 On January 5, 2010, Mr. Neumann executed an agreement to directly serve as a non-
19 litigation consultant for ActivIdentity. ActivIdentity subsequently executed this same agreement
20 on January 12, 2010.

21 On January 8, 2010, this Court conducted a discovery conference and granted Intercede
22 leave to file a motion for protective order barring the disclosure of Intercede confidential
23 information to Mr. Neumann under the terms of the Protective Order. At the same time, the
24 Court ordered that Mr. Neumann could gain access to Intercede’s confidential information,
25 including Intercede’s most sensitive information – its technical specifications and source code --
26 in the interim based on his agreement to be bound by the Protective Order and on the risk that if
27 Intercede’s motion was granted, Mr. Neumann may be disqualified and enjoined from any use of
28 Intercede’s confidential information to which he may have been exposed. Doc # 95.

1 Following the discovery conference and the Court’s Order granting Mr. Neumann interim
2 access to Intercede confidential information, counsel for ActivIdentity provided and
3 Mr. Neumann received the following documents containing Intercede confidential information
4 concerning the technical specifications of its products, bearing the following bates numbers, title
5 and dates:

- 6 1. INT0003386 - 3393: Card Server (15 September 2005);
- 7 2. INT0003394 - 3401: Device Batch System (21 November 2002);
- 8 3. INT0003402 - 3419: Edefice Applet Management - Web Integration (06 August
9 2002);
- 10 4. INT0003420 - 3428: IssueCard Key-Management Behaviour (21 November
11 2002);
- 12 5. INT0003429 - 3446: Key Ceremony HSM (21 November 2002);
- 13 6. INT0003447 - 3459: Open Platform card integration (8 July 2003);
- 14 7. INT0003460 - 3501: OpenPlatform SmartCard (06 March 2003); and
- 15 8. INT0003502 - 3516: Applet Management (20 October 2006)

16 On January 15, 2010, Intercede filed its motion for protective order barring the disclosure
17 of Intercede confidential information to Mr. Michael Neumann. Doc # 97.

18 On January 20, 2010, the day that ActivIdentity’s opposition to Intercede’s motion for
19 protective order was due, counsel for ActivIdentity sent a letter to Intercede which stated:

20 “ActivIdentity has reconsidered Intercede’s objections to Mr. Neumann’s
21 disclosure and has elected to withdraw Mr. Neumann as a proposed consultant
22 requiring access to Intercede’s confidential information. Mr. Neumann will, of
23 course, continue to be bound by the terms of the Protective Order, as stated in his
24 undertaking.”

25 On January 21, 2010, ActivIdentity filed a statement of non-opposition to the motion for
26 protective order, disclosing for the first time that ActivIdentity had retained Mr. Neumann
27 directly as a non-litigation consultant separate and apart from, and in addition to his proposed
28 duties as an expert or consultant in the litigation. Doc # 104.

 On January 22, 2010, Intercede filed a reply to ActivIdentity’s statement of non-

1 opposition which requested that the Court grant the pending motion for protective order and order
2 further necessary relief in light of the newly disclosed facts.

3 On January 25, 2010, ActivIdentity filed a motion to strike, or in the alternative, for leave
4 to file an opposition brief to Intercede's request for sanctions and a finding of contempt in its
5 reply brief.

6 On February 1, 2010, the Court issued an Order (Doc # 122): (1) granting Intercede's
7 motion for protective order (Doc # 97) as unopposed; (2) denying without prejudice Intercede's
8 motion for sanctions and contempt (Doc # 108), specifically stating that "[i]f defendants wish,
9 they may re-file a properly noticed motion in compliance with the Civil Local Rules; and (3)
10 denying ActivIdentity's motion to strike (Doc # 110) as moot.

11 Accordingly, the parties and Mr. Neumann hereby stipulate and request the Court order as
12 follows:

13 1. Mr. Neumann is hereby enjoined from making any use of or disclosing any
14 Intercede confidential information disclosed to him under Protective Order and the Court's Order.

15 2. Mr. Neumann has identified to Intercede in writing and under penalty of perjury,
16 in Exhibit A, attached:

- 17 a. an approximate date of when such confidential information was made
18 available to him;
- 19 b. when Mr. Neumann and ActivIdentity first entered into discussions
20 regarding non-litigation consulting services;
- 21 c. the nature, scope, and subject matter of Mr. Neumann's new consulting
22 work for ActivIdentity; and
- 23 d. when Mr. Neumann informed Wilson, Sonsini, Goodrich & Rosati that he
24 was in direct contact with ActivIdentity, which included discussions
25 regarding and/or an agreement to provide non-litigation consulting
26 services.

27 3. Mr. Neumann has confirmed in writing and under penalty of perjury, in Exhibit A,
28 attached, that:

- 29 a. he has read and understood the Protective Order, the Court's Order, and
30 this Order and agrees to abide by them;
- 31 b. he has destroyed all copies of Intercede confidential information and any
32 notes regarding this confidential information;

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- c. excluding outside counsel of record at Wilson, Sonsini, Goodrich & Rosati, he has not had any discussion with anyone, including any employee, officer, or director of ActivIdentity or anyone acting on its behalf, regarding Intercede's confidential information;
- d. excluding outside counsel of record at Wilson, Sonsini, Goodrich & Rosati, he has not rendered any advice to anyone regarding Intercede's confidential information;
- e. he has not, nor will he ever, discuss or otherwise disclose Intercede's confidential information to anyone at ActivIdentity; and

4. Mr. Neumann is disqualified from serving as a consultant or expert for ActivIdentity in this action with access to Intercede's confidential information.

5. ActivIdentity is barred from hiring Mr. Neumann as an employee or using him as an independent contractor, or consulting with Mr. Neumann's company, Agile Set LLC, for any purposes for two (2) years following the final conclusion of this litigation as provided by Paragraph 9 of the Protective Order.

6. Both parties shall abide by the Protective Order in all respects.

Dated: March 30, 2010

Respectfully submitted,
FENWICK & WEST LLP
By: /s/ Joseph S. Belichick
Joseph S. Belichick
Attorneys for Defendants
INTERCEDE GROUP PLC and INTERCEDE LTD.

Dated: March 30, 2010


Respectfully submitted,
WILSON SONSINI GOODRICH & ROSATI
By: /s/ Julie M. Holloway
Julie M. Holloway
Attorneys for Plaintiff
ACTIVIDENTITY CORPORATION

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Dated: March 29, 2010

Respectfully submitted,


MICHAEL NEUMANN

By: 
Michael Neumann

ORDER

PURSUANT TO STIPULATION, AND GOOD CAUSE SHOWING, IT IS SO ORDERED.

Dated: April 1, 2010


The Honorable Bernard Zimmerman
United States District Court Magistrate Judge

SIGNATURE ATTESTATION

I hereby attest that I have received Julie M. Holloway's concurrence in the e-filing of this document as indicated by the "conformed" signature (s/) above.

By: /s/ Joseph S. Belichick
Joseph S. Belichick



FINNICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO

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Dated: March __, 2010

Respectfully submitted,

MICHAEL NEUMANN

By: _____
Michael Neumann

ORDER

PURSUANT TO STIPULATION, AND GOOD CAUSE SHOWING, IT IS SO
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Dated: _____

The Honorable Bernard Zimmerman
United States District Court Magistrate Judge

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By: _____
/s/ Joseph S. Belichick
Joseph S. Belichick